IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION Nos.5373 and 5403 of 2000

WRIT PETITION No.5373 of 2000

Between:

Col. J.P.S. Mahla,

S/o C.S. Mahla, aged 46 yrs.,

Hindu, R/o 71/4, Havlock Line,

Trimulgherry, Secunderabad.

..... PETITIONER

AND

1. The Union of India, rep. by its Secretary,

Ministry of Defence, New Delhi.

2. The Adjutant General, Army Headquarters,

New Delhi.

3. The Commandant, 1 E.M.E. Centre,

Secunderabad.

4. Brigadier V.P.Singh,

Deputy Director General,

Military Farms, New Delhi.

5. Col. A.S. Rathore, Director,

Military Farms, Army Headquarters,

New Delhi.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari calling for all connected records pertaining to the attachment order Vide No.C/6270/SC/220/AG/DV-2, dt.16-12-1999 as amended vide Order dated 20-1-2000 based on an illegal report of III Court of Inquiry and quash the same by declaring the third court of inquiry as illegal (prayer is amended as per court order dated 28-4-2001 in WPMP No.9828/2000).

Counsel for the Petitioner: Smt.A.CHAYA DEVI

Counsel for the Respondents: Mr.DEEPAK BHATTACHARJEE

WRIT PETITION No.5403 of 2000

Between:

Maj. Param Vir Singh Sidhu,

S/o Lt. Col. A.S. Sidhu (Retd),

Aged about 34 years,

Resident of Hyderabad.

..... PETITIONER

AND

1. The Union of India, rep. by its Secretary,

Ministry of Defence, New Delhi.

2. The Adjutant General,

Army Headquarters, New Delhi.

3. The Commandant, Artillery Centre, Hyderabad

4. Col. A.S. Rathore, Director, Military Farms

Army Headquarters, New Delhi.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari calling for all connected records pertaining to the attachment order Vide No.C/06270/SC/220/AG/DV-2, dt.16-12-1999 based on an illegal report of III Court of Inquiry and quash the same by declaring the III Court of Inquiry as illegal.

Counsel for the Petitioner: Smt. A.CHAYA DEVI

Counsel for the Respondents: MR.B.ADINARAYANA RAO

The Court made the following :

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COMMON ORDER:

These are peculiar cases filed seeking a Writ of Certiorari to call for the records pertaining to the attachment Order dated 16-12-1999 of the 2nd respondent based on an illegal report of III Court of Inquiry and quash the same by declaring the III Court

of Inquiry as illegal.

The short question that falls for consideration in these writ petitions is whether the respondents were correct in conducting three successive inquiries for the same cause of action purported to have arisen on 5-3-1999.

The facts in both the cases are similar and for convenience sake, the facts in W.P.No.5403 of 2000 are stated as under.

According to the petitioner, he joined the military service on 20-7-1992 as Remount and Veterinary Corps and discharged his duties to the utmost satisfaction of his superiors. While so, he was posted at Military Farm, Secunderabad on 7-2-1997 and worked upto May,1999 as Veterinary Officer. His main duty was providing health care to Military Farm animals, advise Officer-incharge on casting of animals on veterinary grounds and conduct postmortem examination of farm animals. While so, he was surprised to know that an inquiry was ordered basing on the alleged telephonic complaint made by one E.R.Rao to Brig.V.P.Singh, DDG MF, on 21-3-1999 from Secunderabad stating that he was from the A.P. Press Bureau and he was informed by the military Farm, Secunderabad Union Office bearers, that 17 cows died due to electrocution on 5-3-1999 and OIC of Military Farm, Secunderabad has hushed up the incident by showing the cows to have died in the normal course. Based on the said alleged telephonic complaint and without verifying the genuineness of the said E.R.Rao, the 4th respondent proceeded to Military Farm, Secunderabad at the instance of Brig V.P.Singh, D.D.G. M.F., on a visit on 23-3-1999 without any specific orders to investigate into the incident, which allegedly took place at Military Farm, Secunderabad. Nothing was informed to him about the so called investigation or inquiry to be conducted by the 4th respondent. Later, he came to know that the 4th respondent took statements from Class III employees behind his back. Respondent No.4 did not mention about the statements obtained by the latter in his absence. If really the 4th respondent came for investigation purpose, he could have ascertained the facts of alleged incident from him or at least he could have asked for his comments about the statements made before him by Class III employees. Later on, he came to know that the 4th respondent took certain documents like history sheets and postmortem reports of animals without the permission of the OIC. From these facts, it is apparent that the 4th respondent wanted to foist a false case against him on the alleged telephonic complaint, as the

reports given by him are in favour of OIC Col.J.P.S.Mahla. However, a Court of Inquiry was ordered and before it as many as 27 witnesses were examined including the Supervisor, who was incharge of cattle yard, Assistant Supervisors, Foreman, Farmhands, daily labour, skin contractor, Management of Goshala OIC and Veterinary Officer i.e. the petitioner. The Court of Inquiry opined that the cause of death of 17 animals was not due to electrocution, but was for various reasons as elicited in the evidence.

However, having not satisfied with the said inquiry, at the instance of the 4th respondent, the II Court of Inquiry was convened on the basis of a fake D.O. letter dated 25-5-1999 without cancelling the I Court of Inquiry. The II Court of Inquiry, after examining more than six (6) witnesses, was cancelled and III Court of Inquiry was convened on the basis of the said fake D.O. letter. Further, at the time of giving evidence in the III Court of Inquiry, Mr. A.K. Kohli, who was Garrison Engineer (Electrical and Mechanical) stated that there was no possibility of leakage of electricity in the system and if there was leakage of electricity, men, who were with the animals, would have died first, as resistance of men is much less than the animals. From the evidence gathered from all the witnesses, who were examined before the Court of Inquiry, in addition to the technical reports, it was clear that no animal died due to electrocution on 5-3-1999. E.R.Rao, who made the telephone conversation and K. Arvamudam, who allegedly addressed a D.O. letter, did not come forward nor their identity was confirmed by the convening authority or by the Presiding Officer of the III Court of inquiry to support the case, as they are fictitious persons. Nothing was elicited from the I Court of Inquiry and at the instance of the 4th respondent, based on the fake D.O. letter dated 25-5-1999, the II Court of Inquiry was convened to reinvestigate the alleged death of milking animals due to electrocution on 5-3-1999 and to ascertain the correct cause of death of the animals. The I Court of Inquiry was ordered without any basis to inquire into the alleged incident based on an alleged telephone complaint. Even though he knows that it was a concocted one, but he faced the first inquiry in order to prove his innocence. After the I Court of Inquiry, nothing has come out against him and it was found to be only a false and fabricated one. Basing on the said findings of the Court of inquiry, which is a fact finding authority, the respondents ought to have dropped the case. Instead of doing so, they convened the II Court of Inquiry for self-same offence for the reasons best known to them. Again by an order dated 22-7-1999 the respondents

convened the III Court of Inquiry. The short and long story of the petitioners is that for the simple allegation of death of 17 animals due to electrocution and hushing up of the matter, three consecutive inquiries had to be conducted only to harass them, since the petitioner in W.P.No.5373 of 2000 was competing with the 5th respondent to climb in the ladder of service.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioners. It is asserted that the authorities are at liberty to conduct any number of inquiries as a fact finding body for the self-same cause of action. There is no bar in conducting more than one inquiry even if the inquiry conducted at the first instance came out to be false as to the alleged incident.

The learned counsel for the petitioners states that Rule 177 read with Rule 179 of the Army Rules,1954 does not permit the authorities from conducting successive inquiries on a fake and anonymous complaint received by them. The I Court of Inquiry, which examined more than 27 witnesses, gave a detailed finding and also opinion through its report dated 25-5-1999 that the alleged incident of electrocution and death of 17 animals was false. The II Court of Inquiry, which examined 6 witnesses, was terminated in the middle. The III Court of Inquiry was again convened only at the instance of the 4th respondent to harass the petitioners and the witnesses, who gave their evidence earlier. The witnesses were made to retrieve from their earlier statements and they were not let off till they gave statements, which suit the authorities. Therefore, the impugned order and the successive inquiries conducted by the authorities are arbitrary and illegal.

Per contra, learned counsel appearing for the respondents contended that there is no bar in conducting more than one inquiry for the self-same allegations. The findings of the I Court of Inquiry need not be considered by the higher authorities. They can very well order for a fresh inquiry into the matter. However, this is not a case of a fresh inquiry. The inquiry conducted at the first instance was continued with the constitution of the II Court of Inquiry, since the authorities have not satisfied with the conducting of first inquiry. Since the Presiding Officer of the II Court of Inquiry was transferred to operational area, it became impossible to go ahead with the inquiry. Therefore, the same was cancelled, though after examining 6 witnesses and therefore, a necessity had arisen to constitute III Court of Inquiry to find out the truth or otherwise as to the death of 17 animals due to electrocution on 5-3-1996 in

the Military Farm at Secunderabad and whether the petitioners had hushed up the matter.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the material made available on record and also the records produced by the respondents relating to the ordering of Courts of Inquiry against the petitioners.

The I Court of Inquiry was convened by an Order dated 4-5-1999. It submitted its report on 25-5-1999 giving a clear and categorical finding with reasons therefor. It had also given its opinion stating that none of the 17 animals belonging to Military Farm, Secunderabad as listed vide Headquarter's South Commandant Lr.No.030301/IS/MF-Sec'bad dated 15-4-1999 have died due to electrocution on 5-3-1999 as alleged. Further, it opined that out of the 17 animals 10 were died due to reasons other than electrocution and 7 animals have been handed over to Gaushala on different dates during March,1999 after having obtained sanction from the Director, Mlitary Farm, Headquarters South Command. Out of the balance 10 animals, 2 died due to snake bike and other eight animals died due to systemic diseases as per the details furnished by the Headquarters South Command letter. The I Court of Inquiry further opined that the disposal of these 17 farm animals during the month March,1999 was correct and as per the existing procedure. Thus, the I Court of Inquiry came to an end on 25-5-1999. In this report, there was nothing against the petitioners. The II Court of Inquiry was convened on 6-7-1999 to reinvestigate the alleged death of 17 milking animals due to electrocution on 5-3-1999 and ascertain the correct cause of disposal of animals. This inquiry was launched purported to be on the basis of a D.O. letter dated 25-5-1999 received from one Sri K. Arvamudam, IAS, along with documents. It is curious to note that the day on which the I Court of Inquiry was concluded, the said D.O. letter was received. On enquiries, of course, it was found that the D.O. letter was a fake one and the said Arvamudam was not identified. However, the Department felt even if the said letter is anonymous and fictitious, an inquiry must be conducted. Unfortunately, this inquiry was terminated on 22-7-1999 after examining about six witnesses, purported to be on the ground that the Presiding Officer was transferred to operational area and conducting of inquiry became impossible. Thus, III Court of Inquiry was convened on 22-7-1999 by cancelling the II Court of Inquiry convened on 6-7-1999. The III Court

of Inquiry submitted its report on 3-10-1999 finding the petitioners guilty of the charges and recommended for taking disciplinary action against him. No reasons are forthcoming why the I Court of Inquiry was not believed or was cancelled. So far as the II Court of Inquiry is concerned, as stated above, the Presiding Officer was transferred to operational area and as such, it has to be cancelled. The Convening Order dated 22-7-1999 of the III Court of inquiry also refers to cancellation of II Court of Inquiry. Thus, as contended by the learned counsel for the petitioners three separate Courts of Inquiry were constituted for inquiring into the self-same allegations. Therefore, the contention of the learned counsel for the respondents that they are not independent inquiries and it is nothing but continuation of the original inquiry on 4-3-1999, cannot be countenanced. Learned counsel for the respondents could not place before this Court any provision of law enabling the 4th respondent to conduct successive inquiries without the same being placed before the concerned authorities for their satisfaction either to accept or to reject.

The reasons for conducting successive inquiries are also not forthcoming except saying that the Department can conduct any number of inquiries as it likes. Sri Deepak Bhattacharjee, learned counsel for the respondents, contended that Rule 177 read with Rule 179 and Rule 22 of the Army Rules,1954 enables the authority for conducting successive inquiries. The above Rules read as under:

> "**22. Hearing of Charge:-** (1)……..
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> (2) The Commanding Officer shall dismiss a charge brought before him if, in his opinion, the evidence does not show that an offence under the Act has been committed and may do so if, he is satisfied that the charge ought not to be proceeded with.
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> Provided that the commanding officer shall not dismiss a charge which he is debarred to try under sub-section (2) of Sec.120 without reference to superior authority as specified therein.
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> (3) After compliance of sub-rule (1), if the commanding officer is of opinion that the charge ought to be proceeded with, he shall within a reasonable time—
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> a. dispose of the case under Section 80 in accordance with the manner and form in Appendix III; or
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> b. refer the case to the proper superior military authority; or
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> c. adjourn the case for the purpose of having the evidence reduced to writing; or
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> d. if the accused is below the rank of warrant officer, order his trial by a summary court-martial.

177. Courts of Inquiry.—(1) A court of inquiry is an assembly of officers or of officers and junior commissioned officers or warrant officers or non-commissioned officers directed to collect evidence and, if so required, to report with regard to any matter which may be referred to them.

(2) The court may consist of any number of officers of any rank, or of one or more officers together with one or more junior commissioned officers or warrant officers or non-commissioned officers. The members of court may belong to any branch or department of the service, according to the nature of the investigation.

(3) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.

179. Procedure.—(1) The court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific and shall state the general character of the information required. They shall also state whether a report is required or not.

(2) to (4)……..

(5) The court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

(5A)…….

(6)……."

From a reading of the above Rules, one cannot assume that there is an express power conferred on the authorities to conduct successive inquiries for inquiring into the self-same allegations. May be, since the Court of Inquiry is only a preliminary fact finding body, on the basis of which a detailed inquiry would be conducted, any number of inquiries can be conducted. But, no reason is forthcoming for conducting such successive inquiries. The learned counsel for the petitioners submits that there is a *mala fide* intention on the part of the 4th respondent and he is acting at the behest of the 5th respondent in W.P.No.5373 of 2000, who is competing in the rank along with the petitioners therein. It is also the case of the petitioners that none of the witnesses have spoken anything positively against the petitioners even in the III Court of Inquiry. At this stage, the Court felt that it is better to look into the records. A perusal of the record i.e. Minutes of III Court of Inquiry dated 3-10-1999 would show that none of the witnesses are sure of the symptoms of electrocution. The only evidence leading to the electrocution theory is shaking, falling and crying in pain of

the animals and stopping of such activity on the motor being switched off. Lot of weightage has been given to the additional evidence and confessional statements of two persons. These two persons have given evidence under coercion. The affected persons, M/s D.S.Koli and V.P.S.Rathore have been posted out to Military Farm, Karu (Ladakh,HAA) and Military Farm, Tenga Valley, prematurely. D.S.Koli had come on compassionate grounds to Secunderabad only in May,1998. Both these individuals received their postings to move forthwith after giving the first statement and gave fresh/additional evidence within 2 to 4 days of receipt of posting orders. It is also recorded that their evidence may not be relied upon. Some other witnesses have contradicted themselves. 17 Cows died due to an accident. Whether there was any negligence leading to the accident has not been established as the actual mode of electrocution itself has not been established. Hence, no individual can be blamed for the deaths/accidents. It is further stated that Lt. Col J.P.S. Mahla (writ petitioner) cannot be blamed entirely for not reporting the incident. Although he denied it, evidence of Brig V.P.Singh, DDG MF and Col A.S.Rathore, Director, MF indicate that he had informally informed them about it. He can be blamed for not reporting it formally under SAO 13/8/80 and his subsequent actions of trying to tamper with records/disposal of bodies and not reporting, even informally, to the Station Commander, Station Headquarters, aggravated the commission. The tremendous improvement brought by Lt Col JPS Mahla in the MF needs to be taken cognizance of and has been brought out in the Court of Inquiry findings. Capt. PVS Sidhu has helped in disposal of the bodies and preparation of false postmortem report. Therefore, recommended for taking disciplinary action.

The submission of the learned counsel for the petitioners that the two Officers D.S.Koli and V.P.S.Rathore have been transferred out of turn and by coercive means of transfer orders, they obtained some sort of confessional statements only to harass the petitioners seems to be not fully incorrect. This Court cannot go into the merits and demerits of the inquiry report in exercise of its powers under Article 226 of the Constitution of India. The only question that needs to be looked into is whether the respondents have any power to conduct successive inquiries for the self-same allegations made against the petitioners, thrice. Even assuming that such a power is available, absolutely there is no reasons furnished anywhere in the entire records placed before this Court, for brushing aside the I Court of Inquiry report and what necessitated for convening of the II Court of Inquiry and why the II Court of Inquiry was dispensed with and a III Court of Inquiry was convened. It is also not denied that

the D.O. letter purported to be written by K.Arvamudam was fake. The only thing is that though the D.O. letter is fake, it does not prevent the authorities from making any inquiries into the matter. But, this is a case where on the very same day the I Court of Inquiry gave its findings, i.e. 25-5-1999 the II Court of Inquiry was convened on the basis of the alleged D.O. letter of K.Arvamudam, who was not identified, and that itself would show that there is something more than what the simple meeting of eyes, though the learned counsel for the respondents strenuously contended that the inquiry conducted was one and the same and it was only re-assembling of the Court of Inquiry and not constitution of different Courts of Inquiry for the same purpose. This contention of the learned counsel cannot be accepted in view of the fact that the three orders issued by the authorities for convening Courts of Inquiry would itself reveal as to cancellation of the earlier I and II Courts of Inquiry and constitution of III Court of Inquiry. Insofar as the I Court of Inquiry is concerned where the whole thing was concluded, there is no reason why the report was not accepted or what was the necessity for conducting a fresh inquiry except the purported DO letter issued by K.Arvamudam, IAS whose identity was not made out.

In support of his contention that three inquiries are permissible, learned counsel for the respondents relied upon an unreported Judgment of the High Court of Jammu & Kashmir in S.W.P.No.276 of 1995, wherein it was held:

> "6. The submission that Army Rules do not allow the holding of the Second Court of Enquiry is not well founded. The Army Rules,1954 or even the Army Act,1950 under which these rules are framed, do not, at all prohibit the holding of a Second Court of Enquiry. The relevance placed by Shri RA Jan on a single Bench Judgment of Delhi High Court in the case of *Raghbir Singh Sangwan V Union of India and others* reported in 1981(3) S.L.R. 207, in my respectful opinion is not helpful to him because, the learned single Judge of Delhi High Court in that case did not lay down as a policy of law that the holding of Second court of Enquiry was specifically prohibited…….In any event, I am in respectful disagreement with the aforesaid view expressed in that judgment because in my humble opinion the holding and convening of a Second Court of Enquiry, if the Convening Authority does not feel satisfied about the opinions and findings of the first Court of Enquiry, is not at all prohibited under any provisions of the Army Act or the Army Rules. I am of the considered view that **it is open to a competent authority to order a Second Court of Enquiry with regard to the matter under investigation, if it feels that the proceedings of the First Court of Enquiry were not properly conducted or that its findings and opinions require reinvestigation or reconsideration by a Second Court of Enquiry.** Unless, in law, there is a specific prohibition about a convening of a Second Court of Enquiry, by implication or otherwise, no such prohibition can be read into the Rules of the Act." (emphasis supplied)

The learned counsel for the respondents also relied upon the Judgment of the Apex Court in **SURESH CHAND MEHTA v. DEFENCE SECRETARY (UOI)** wherein it was held as under:

> "13. It was next submitted by Capt. Virendra Kumar that, alternatively, the inquiry held by the staff court of inquiry in September 1986 as aforesaid it must be regarded as a trial of the petitioner and, in view of the findings of that court of inquiry, which we have referred to earlier, the petitioner could not be tried again. We find that there is no substance in this contention. The said inquiry was by a court of inquiry provided for in R.177 of the Army Rules. The provisions of sub-r.(1) of the said Rule show that the said inquiry must be by an assembly of officers of the ranks described in sub-r.(1) and the purpose of this inquiry is merely to collect evidence and if so required, to report with regard to any matter, which may be referred to the said officers. This is merely in the nature of a preliminary investigation and cannot be equated with a trial."

He has also relied upon a Judgment of Punjab & Haryana High court in **COL. SARAVJIT SINGH v. UNION OF INDIA** in which it was held that holding of more than one Court of inquiry under the Army Rules is not barred. The Army Rules vest the power in the Officer-in-Command of any body of troops to set up a Court of Inquiry for collecting evidence into any matter. The Courts of Inquiry, thus, perform function of investigating agency and in cases where the said body collects incriminating evidence, which is likely to affect the character or military reputation of personnel whose conduct is being inquired into, the provisions of Rule 180 are to be complied with.

He further relied upon a decision of the High Court of Jammu & Kashmir in **LT.COL.RAMESH MOHAN v. UNION OF INDIA & OTHERS** wherein it was held by a Division Bench as under:

> "34. The Court further pointed out that the Rule 180 gives protection to the person effected even at the stage of Court of Inquiry. The protection was given in that case. In that case, it is also made clear in para 7 that under Rule 177 of the Rules, a Court of Inquiry can be set up to collect evidence and to report, if so required, with regard to any matter, which may be referred to it. The Court of Inquiry is in the nature of a fact-finding Inquiry Committee. In that case, investigation of the tentative charges was carried out by the Commanding Officer under Rule 22 read with Rule 25 and the appellant was given an opportunity to cross-examine the witnesses and produce his witnesses. While recording summary of evidence under Rule 23, he was again given an opportunity. Thus when there is a question in the opinion of the Court of Inquiry that evidence led before it affects the character or Military reputation of a person, then opportunity is required to be given. If it is known from the initiation of enquiry, then he is required to be given an opportunity as contemplated. However, when it is not certain whether offence is committed or not or who has committed, there is no question of giving such an opportunity during investigation."

Yet another Judgment was relied upon by the learned counsel for the respondent reported in **MAJOR CHARANJIT LAMBA v. UNION OF INDIA & OTHERS** in which a Division Bench of the High Court of Bombay held as under:

> "15(A). It should be borne in mind that if an officer of the defence service commits the same offence which a person of the ranks commits the gravity would be more because being an officer he is expected to behave with a greater sense of responsibility than one in the ranks, in fact, he is expected to set the tone and example for him. Consequently, if for the same offence an officer it awarded a stiffer sentence than one in the ranks the differentiation would be perfectly rational and intelligible. It should be always remembered that the right to equality enshrined in Article 14 of the Constitution of India only postulates that the likes should be treated alike. It only prohibits irrational discrimination and not rational classification.
>
> 15(B). It should not be understood to mean that the principle of proportionality culled out by the Apex Court, in the decisions referred to in Paragraph 14, implies that if the same offence is committed by an officer and by one in the ranks identical punishment would be meted out to both. Though the offence may be the same, but since the gravity would be more in the case of an officer, it would only be just and equitable to award him a stiffer sentence. For instance, if in place of the petitioner one in the ranks was found guilty on the first charge and dismissed from service perhaps it could have been contended that the sentence of dismissal was too harsh."

Learned counsel for the respondents also relied upon a Judgment of the Apex Court in **PRITHI PAL SINGH v. UNION OF INDIA** wherein it was held as under:

> **"15.** Article 33 confers power on the Parliament to determine to what extent any of the rights conferred by Part III shall, in their application to the members of the Armed Forces, be restricted or abrogated so as to ensure the proper discharge of duties and maintenance of discipline amongst them. Article 33 does not obligate that Parliament must specifically adumbrate each fundamental right enshrined in Part III and to specify in the law enacted in exercise of the power conferred by Article 33 the degree of restriction or total abrogation of each right. That would be reading into Article 33 a requirement which it does not enjoin. In fact, after the Constitution came into force, the power to legislate in respect of any item must be referable to an entry in the relevant list. Entry 2 in List I: Naval, Military and Air Forces; any other Armed Forces of the Union would enable Parliament to enact the Army Act and armed with this power the Act was enacted in July 1950. It has to be enacted by the Parliament subject to the requirements of Part III of the Constitution read with Article 33 which itself forms part of Part III. Therefore, every provision of the Army Act enacted by the Parliament, if in conflict with the fundamental rights conferred by Part III, shall have to be read subject to Article 33 as being enacted with a view to either restricting or abrogating other fundamental rights to the extent of inconsistency or repugnancy between Part III of the Constitution and the Army Act. This is no more res integra in view of the decision of the Constitution Bench of this Court in *Ram Sarup* v. *Union of India*[2] in which repelling the contention that the restriction or abrogation of the fundamental rights in exercise of the power conferred by Article 33 is limited to one set out in Section 21 of the Act……
>
> **41.** Mr Sanghi next contended that it is obligatory upon the authorities concerned to appoint a Court of enquiry whenever an enquiry affects the character or military reputation of a person subject to the Act and in such an enquiry full opportunity must be afforded to such person of being present throughout the enquiry and of making any statement or giving any evidence he may wish to make or give and of cross-examining any witness whose evidence in his opinion affects the character or military reputation and producing any witness in defence of his character or military reputation. There are some provisions in the Act which (*sic*) setting up of a Court of Enquiry in the circumstances and for the purpose set out in the provisions. Section 89 permits collective fines to be imposed in the circumstances therein mentioned but

the same can be done after obtaining the report of a Court of enquiry. In other words, where it is considered necessary and permissible under the Act to impose a collective fine it can be done after obtaining the report of a Court of enquiry which will presage an appointment of such a Court of enquiry. Similarly, Section 106 comprehends the appointment of a Court of enquiry when any person subject to the Act has been absent from his duty without due authority for a period of 30 days, and such court is required to enquire in respect of the absence of the person and the deficiency if any in the property of the government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries, and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps of department to which the person belongs shall enter in the court martial book of the corps of department a record of the declaration. A reference to these two sections would show that where action can be taken after obtaining report of the Court of enquiry it has been so specified. Now, when an offence is committed and a trial by a general court martial is to be held, there is no provision which requires that a Court of enquiry should be set up before the trial is directed. Mr Sanghi, however, urged that on a correct interpretation of Rule 180, it would appear that whenever the character of a person subject to the Act is involved in any enquiry, a Court of enquiry must be set up. Rule 180 does not bear out the submission. It sets up a stage in the procedure prescribed for the courts of enquiry. Rule 180 cannot be construed to mean that whenever or where va in any enquiry in respect of any person subject to the Act his character or military reputation is likely to be affected setting up of a Court of enquiry is a sine qua non. Rule 180 merely makes it obligatory that whenever a Court of enquiry is set up and in the course of enquiry by the Court of enquiry character or military reputation of a person is likely to be affected then such a person must be given a full opportunity to participate in the proceedings of Court of enquiry. Court of enquiry by its very nature is likely to examine certain issues generally concerning a situation or persons. Where collective fine is desired to be imposed, a Court of enquiry may generally examine the shortfall to ascertain how many persons are responsible. In the course of such an enquiry there may be a distinct possibility of character or military reputation of a person subject to the Act likely to be affected. His participation cannot be avoided on the specious plea that no specific enquiry was directed against the person whose character or military reputation is involved. To ensure that such a person whose character or military reputation is likely to be affected by the proceedings of the Court of enquiry should be afforded full opportunity so that nothing is done at his back and without opportunity of participation, Rule 180 merely makes an enabling provision to ensure such participation. But it cannot be used to say that whenever in any other enquiry or an enquiry before a Commanding officer under Rule 22 or a convening officer under Rule 37 of the trial by a court martial, character or military reputation of the officer concerned is likely to be affected a prior enquiry by the Court of enquiry is a sine qua non. Therefore, the contention being without merits must be negatived."

The sum and substance of the decisions relied upon by the learned counsel for the respondents is that the Courts are not barred from conducting successive inquiries, if necessary. But that eventuality is only in case the I court of Inquiry could not be completed and there was no report and opinion submitted by the I Court of Inquiry. All those decisions have no much relevance to the facts of these cases, since, in the instant cases, the very I Court of Inquiry, which gave its finding and opinion and which were available on record, were not examined by the concerned authority as required under law and ordered II Court of Inquiry and also III Court of Inquiry.

The learned counsel for the petitioners stated that the petitioners has attributed *mala fides* against the respondents 4 and 5, but there was no categorical denial of the

same in the counter affidavit filed on behalf of the respondents. Therefore, it must be deemed that the allegation of *mala fides* made against the respondents is deemed to have been admitted. In support of his contention, he relied upon the Judgment of the Apex Court in **S. PRATAP SINGH v. STATE OF PUNJAB** wherein allegations of *mala fides* are attributed against the Minister and the Minister has not filed any counter affidavit, but the Secretary in the Department, who has no personal knowledge regarding the allegations against the Minister filed the counter. Under those circumstances, it was held that the *mala fides* were proved.

Generally speaking, where an issue of fact had been tried by a competent Court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or *res judicata* against the prosecution. In this case, such an inference can be drawn for the reason that absolutely there are no reasons forthcoming as to why the I Court of Inquiry was not accepted and what are the reasons necessitated for convening the II Court of Inquiry and why the II Court of Inquiry was also wound up. The contention of the learned counsel for the petitioners that series of inquiries are conducted till the evidence is found against the petitioners also seems to be not out of place to consider. Even in the III Court of Inquiry conducted, except one witness and M/s. D.S.Koli and V.P.S.Rathore, who were coerced to give evidence to hold the petitioners guilty, all other 38 witnesses examined have stated that there was no such electrocution on the date of incident i.e. 5-3-1999.

It may not be out of place to notice that this is not a case where National Security is involved or some other grave and serious omissions are pointed out. Even assuming that the animals died of electrocution and the said information was hushed up, what made the Department to conduct successive inquiries ultimately to find the petitioners guilty of the charges is not explained. The contention of the petitioners that respondents 4 and 5 were coerced to give such statements contrary to the statements given by them earlier is not out of context in view of the findings of the III Court of Inquiry itself. The petitioners in clear and categorical terms stated that respondents 4 and 5 are inimically disposed of against them and, therefore, the successive inquires have been conducted. This is nothing but *mala fide* action on the part of respondents 4 and 5 is not denied as required under the law.

I have gone through the entire record particularly the reports of the Courts of Inquiry as well as the statements of D.S.Koli and V.P.S.Rathore. Nothing much was

elicited from their evidence except that they were forced to give some statement, which they have retrieved in the III Court of Inquiry; but the III Court of Inquiry was conducted by hanging the sword of transfer on their necks. This all would go to show that there was a *mala fide* intention on the part of the authorities in conducting successive inquiries and holding the petitioners guilty of the charges somehow. The power vested in the authority under Rule 177 read with Rules 22 and 179 of the Rules does not automatically confer a right to conduct successive inquiries as a matter of course. It is open to a competent authority to order II Court of Inquiry with regard to a matter under investigation, if it feels that the proceedings of I Court of Inquiry were not properly conducted or that its findings and opinions require reinvestigation or reconsideration by II Court of Inquiry. Admittedly, this is a case where absolutely no reasons are forthcoming for conducting successive Courts of Inquiry.

For all the above reasons, I am of the considered opinion that the action of respondents in conducting successive inquiries is arbitrary and illegal apart from being *mala fide.* Accordingly, the writ petitions are allowed and the impugned orders are set aside. No order as to costs.

14-6-2005

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the Tuesday,

Fourteenth day of June Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary, Ministry of Defence, Union of India,

New Delhi.

2. The Adjutant General, Army Headquarters,

New Delhi.

3. The Commandant, 1 E.M.E. Centre,

Secunderabad.

4. Brigadier V.P.Singh,

Deputy Director General,

Military Farms, New Delhi.

5. Col. A.S. Rathore, Director,

Military Farms, Army Headquarters,

New Delhi.

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